

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Rick A. Lawson *et al.*
Serial No.: 10/736,324
Date Filed: December 15, 2003
Group Art Unit: 2612
Confirmation No.: 3731
Examiner: Lieu, Julie Bichngoc
Title: **FUGITIVE EMISSIONS DETECTION
DEVICES**

MAIL STOP – AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL REQUEST FOR REVIEW

I. Introduction.

Claims 1-10, 19-21, 23, 25-35, and 38-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,385,297 issued to Alan D. Rein *et al.* (“Rein”), in view of U.S. Patent 5,798,945 issued to George Benda (“Benda”). Claim 24 was rejected under 35 U.S.C. §103(a) as being unpatentable over Rein, in view of Benda, and further in view of U.S. Patent 5,774,052 issued to Dennis Hamm *et al.* (“Hamm”). For purposes of this filing, Applicants have assumed Claim 43 was rejected in the same manner as Claim 33 from which it depends.

II. The Claimed Invention.

Claims 1 and 33 are independent claims. Claims 1 and 33 are directed, *inter alia*, to “battery powered” systems comprising detectors and transmitters for wirelessly collecting/transmitting data relating to “temperature” and either pressure, level, and/or fugitive emissions in a “plant,” *e.g.*, in a petrochemical, chemical, pharmaceutical and/or a food processing plant. (See Spec. page 5, lines 5 - 12). And Claim 33 is expressly directed to the “battery powered” detection and transmission of data relating to “an enclosed material in the plant,” *e.g.*, enclosed materials like chemicals, petrochemicals, and foods *etc.* (See Spec. page 5, lines 5 - 12) Claims 34 and 35 expressly claim the “enclosed material” of Claim 33 is “enclosed” in a “pipe” and a “valve stuffing box,” respectively.

III. Teachings of Cited Art Rein.

Rein is directed to “an air conditioning system, and more particularly, to a wireless communication system between the air distribution controllers and the zone temperature sensors in the zone to be controlled.” (Rein, Col. 1, lines 1-5) Rein also teaches that his sensors may be powered by an AC power source: **“The power source 59 may also be a wired connection to an AC power source.”** (Rein, Col. 8, lines 43-45) (*emphasis added*) The Examiner has agreed the only “event or condition” monitored by Rein’s system is ambient air temperature in a room of an office building, nothing else. As a result, Rein’s “central receiver 66” is not equipped to and does not receive or process pressure, level, and/or emission related telemetry signals.

IV. Teachings of Cited Art Benda.

Benda is directed to “[s]mall modules directly situated **at power outlets in buildings**, that contain at least one sensor [to] gather and report local environmental data . . . **The local modules report data back over existing building power wiring** to a central unit.” (Benda, Abstract, Lines 1-7) (*emphasis added*). Thus, Benda not only powers its sensors with AC building power (not batteries), but also uses the “building power wiring” to “report data back . . . to a central unit.” And Benda expressly teaches that “[i]f some remote unit 1 is to be located where communication is impossible over building power wiring, special twisted pair wiring 3 can be used for that remote unit.” (Benda, Col. 3, lines 9-13) (*emphasis added*). Therefore, Benda teaches a completely hard-wired AC powered system reporting over building or other wiring.

V. The Claimed Invention is Nonobvious.

A. **Combination of Rein and Benda Does NOT Yield the Claimed Invention.**

Assuming the combination of Rein and Benda is proper, which Applicants do not concede, the combination does not yield the claimed invention. For example, one of ordinary skill in the art starting with Rein’s building temperature monitoring and reporting system as the Examiner does, and knowing of Benda’s AC powered system for monitoring and reporting building temperatures and other building conditions, and desiring to monitor temperatures plus other building conditions, would completely drop Rein’s wireless temperature monitoring and reporting system and use Benda’s system utilizing the building’s AC power and the building’s AC power wiring to report all data back to Benda’s “central logging unit 4.” This is the correct conclusion because Rein expressly teaches that its sensors can be AC powered when desired, *e.g.*, when AC power is available: **“The power source 59 can also be a wired connection to an AC power source .”** (Rein, Col. 8, lines 43-45). And since Rein is directed to the comfort of workers in offices of a building, and AC power outlets and wiring are readily available in office buildings, the combination of Rein and Benda would yield an AC powered system using AC power outlets.

B. The Examiner Improperly Fails to Consider the Entire Teachings of Rein and Benda.

The Examiner asserts:

The Examiner submits that Benda is used to show a teaching that different detectors are being used along with a temperature detector in a building environment to ensure safety is well known in the art and it would have been obvious to one skilled in the art to apply this teaching in the Rein System because Benda's System would further enhance the comfort along with safety advantages. Benda is combined with Rein for such reason, thus, the combination is proper. **How the Benda system transmits the signal is irrelevant, this feature is not used in the rejection against the Applicants' claimed invention.** (*emphasis added*)

And the Examiner further asserted:

As the Examiner submitted in the response to argument 1, **the wire configuration in Benda would not affect the wireless transmission in Rein** because Benda is used for purpose of providing teaching of different detection in a building. (*emphasis added*)

The above picking and choosing of only parts of the prior art using the claimed invention as a road map is classic improper hindsight. As noted above, the Examiner expressly states, in relation to the claimed and rejected "wireless" system, that how the Benda reference transmits a signal with AC powered sensors over the wiring of a building is "irrelevant." In addition, the Examiner completely ignores Rein's express suggestion to utilize AC power, *i.e.*, "The power source 59 can also be a wired connection to an AC Power source." (Rein, Col. 8, lines 43-45). It is basic patent law that a "prior art reference **must be** considered in its entirety, *i.e.*, as a **whole**, including portions that would lead away from the claimed invention." MPEP 2141.02.VI *citing W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 8551 (1984)(*emphasis original and added*). The Examiner's rejection is in complete contravention to this well-established patent law. Consequently, the Examiner has not established a *prima facie* case of obviousness in relation to Claims 1-10, 19-21, 23, 25-35, and 38-43. Withdrawal of the rejection is urged.

C. Claims 19, 20, 30, and 31, Dependent on Claim 1, are Nonobvious for Additional Reasons.

Claims 19, 20, 30 and 31 were also rejected as obvious over Rein in light of Benda. Claim 19 is directed to the system of Claim 1, "**wherein at least one of the detectors is positioned in communication with a pipe.**" Claim 20 is directed to the system of Claim 1, "**wherein at least one of the detectors is positioned in communication with a valve in said plant.**" Claim 30 is directed to the system of Claim 1, "**wherein at least one of the detectors is positioned in communication with a pipe enclosure.**" Claim 31 is directed to the system of Claim 1, "**wherein**

at least one of the detectors is positioned in communication with a valve stuffing box enclosure." (emphasis added)

As admitted by the Examiner, Rein is directed to monitoring and reporting general air temperatures from a room of an office building. Rein teaches nothing in regards to a sensor in communication with a pipe, a valve, a pipe enclosure, or a valve stuffing box enclosure. In fact, that would be contrary to Rein's purpose of monitoring the general air environment to ensure the comfort of workers in an office building. Likewise, Benda fails to disclose anything in relation to a detector in communication with a pipe, a valve, a pipe enclosure, or a valve stuffing box enclosure. Benda, like Rein, is focused upon monitoring the general air environment to ensure the safety of workers in that environment and is not concerned with material conditions, *e.g.*, a material within a pipe, a valve, a pipe enclosure, and/or a valve stuffing box enclosure. Thus, neither Benda nor Rein disclose anything with regard to detectors in communication with enclosures.

D. Claim 33 and Its Dependents are Nonobvious.

Claim 33 and thus claims 34, 35, and 38 - 43 are directed to, among other things, "a detector . . . operable when voltage from a battery is applied thereto [or a battery powered detector] and monitoring and/or detecting an event or condition in the plant relating to **an enclosed material** in the plant." (emphasis added) As admitted by the Examiner, Rein is directed to monitoring and reporting air temperatures from rooms in an office building. Claim 33 is directed to "enclosed materials" not merely an "enclosure," which the Examiner improperly equates with a room in a building. One of ordinary skill in the art reading the present specification understands the claimed "enclosed materials," as disclosed in the present specification, includes chemicals, petrochemicals, foods, and oils and gases (page 3, lines 1 - 16) -- not mere air allegedly, according to the Examiner, "enclosed" in a room of Rein or Benda. And examples of the "enclosures" in which the "enclosed materials" are enclosed, are expressly disclosed in the present specification and include pipes, tanks and valve stuffing boxes (See Spec., *passim*) -- not mere air "enclosed" in a room of a building of Rein or Benda.

Claim 34 is directed to the system according to Claim 33, "wherein the enclosed material is **enclosed in a pipe**." (emphasis added) Claim 35 is directed to the system according to Claim 33, "wherein the enclosed material is **enclosed in a valve stuffing box**." (emphasis added) Claim 42 is directed to the system according to Claim 33, "**wherein the detector monitors and/or detects emissions from an enclosure**." (emphasis added) Claims 34, 35 and 42 were also rejected over Rein in view of Benda.

The Examiner, using improper hindsight, ignores the express teachings of the prior art that are in contravention to her obviousness theory. Benda makes a clear distinction between a "building" and an "enclosure." Indeed, Claim 7 of Benda claims:

For a residential or commercial **building** . . . portable environmental remote sensor unit comprising an **enclosure** equipped with a standard pair of electrical prongs whereby the unit can be plugged into any standard electrical outlet . . .

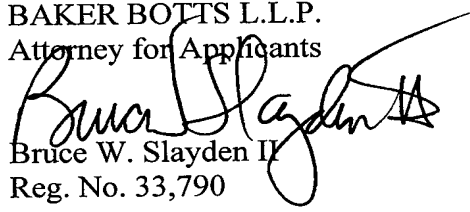
(Benda, Col. 6, lines 48-56) (emphasis added). It is improper to equate the claimed "enclosed material" with ambient air "enclosed" in a room of an office building, **especially when the Examiner's own cited art distinguishes between a "building" and an "enclosure."** One of ordinary skill in the art reading the current specification understands the claimed invention is directed to enclosed materials, *e.g.*, chemicals, petrochemicals, foods, and oil and gas enclosed in the claimed pipes, valves, tanks, or valve stuffing boxes. The Examiner has not established a *prima facie* case of obviousness. The rejection should be withdrawn.

VI. Conclusion.

Applicants submit these Arguments in Support of Pre-Appeal Brief Request for Review along with a Notice of Appeal. Applicants authorize the Commissioner to charge Deposit Account No. 50-2148 in the amount of \$250.00 for the Notice of Appeal fee and in the amount of \$510.00 for a Petition for Three-Month Extension of Time Request. Applicants believe there are no further fees due at this time; however, the Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayments to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this request that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2606.

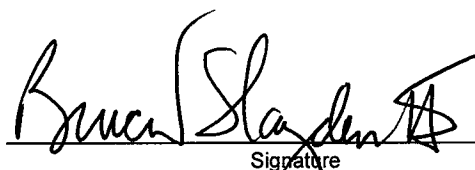
Respectfully submitted,
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 068341.0109
I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office on _____ Signature _____ Typed or printed name _____	Application Number 10/736,324	Filed 12/15/2003
	First Named Inventor Rick A. Lawson et al.	
	Art Unit 2612	Examiner Lieu, Julie Bichngoc
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"><div style="width: 45%;"><p>I am the</p><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>33,790</u></p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"> Signature Bruce W. Slayden II Typed or printed name <u>512.322.2606</u> Telephone number <u>7/9/2007</u> Date</div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"><p><input type="checkbox"/> *Total of _____ forms are submitted.</p></div>		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF,C ommissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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